

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3079/P2dn  
RCT:cjs:jm

November 5, 2013

This is a redraft of the proposal creating a statewide variance from the numeric water quality standard for phosphorus. There are many changes from the first version, so it should be reviewed carefully.

One of the instructions was to use certain provisions in s. 283.15 for the process under this proposal. It did not quite work to simply use cross-references, so I modified language from those provisions to work with the rest of proposed s. 283.16.

As requested, this redraft changes the period for review of the variance from three years to ten years, based (as I understand it) on the Environmental Protection Agency's proposed regulation on variances from water quality standards, published in the Federal Register on September 4, 2013. The proposed regulation states that variances must have an expiration date that is as short as possible and that may not exceed 10 years. The introductory materials in the Federal Register state that establishing an expiration date will ensure that the conditions of a variance will be reevaluated and subject to a public review on a regular basis. The same materials state that, as water quality standards, variances must be reviewed on a triennial basis.

These positions by EPA may seem to be inconsistent. However, as I understand it, EPA has provided in the past that three-year review of variances would be required, even though it might require review during the term of a variance. For example, the EPA Great Lakes Water Quality Initiative Implementation Procedures, in 40 CFR 132, Appendix F, state that variances may last up to five years and that a state must review and **modify** variances, as necessary, as part of the state's triennial review of water quality standards. It seems unlikely to me that EPA would approve a statewide variance that provides for review only every 10 years.

Please contact me with questions or redraft instructions.

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